KENNETH W. MITCHELL

IBLA 84-806 Decided August 16, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, establishing a new priority for noncompetitive oil and gas lease offer NM-A 58566-TX.

Reversed.

1. Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Offers to Lease

BLM may not award priority as of the date of filing an amended over-the-counter noncompetitive oil and gas lease offer for acquired lands where the original lease offer was defective only to the extent of having included some land within an incorporated city, town, or village, which was unavailable for leasing under 30 U.S.C. § 352 (1982) and which was excluded from the amended offer.

APPEARANCES: Kenneth W. Mitchell, pro se; Cecelia Ann Duncan, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Kenneth W. Mitchell has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 30, 1984, establishing a new priority for his noncompetitive oil and gas lease offer NM-A 58566-TX.

On March 6, 1984, appellant filed a noncompetitive oil and gas lease offer for 324.97 acres of acquired land situated in Dawson County, Texas, near the town of Lamesa described in part as "BLM Acquisition Deed NM-57400 (TX)," 1/ pursuant to section 3 of the Mineral Leasing Act for Acquired Lands,

1/ The regulation governing land descriptions for acquired lands oil and gas lease offers outside the area of the public land surveys, authorizes use of an acquisition number assigned to the tract by the acquiring agency where the offer is accompanied by a map, as was appellant's offer. 43 CFR 3111.2-2(c). Appellant tendered rental for the full 325 acres.

as amended, 30 U.S.C. § 352 (1982). On March 30, 1984, appellant filed an amended offer, excluding part of the land which was "included in an incorporated townsite," as stated in a cover letter which accompanied the amended lease offer. The amended offer described the remaining 240 acres of acquired land by metes and bounds. In its July 1984 decision, BLM stated that appellant's amended offer "changes the filing priority of your offer to March 30, 1984," subsequent to the filing of a conflicting oil and gas lease offer (NM-A 58627-TX) which had been filed on March 21, 1984. Thus, BLM held the latter offer had "first priority" in the adjudication of the two offers.

In his statement of reasons for appeal, appellant contends his amended lease offer should retain the priority of his original offer where it did not add any acreage but merely reduced the acreage included in the original offer. Appellant states if he had not filed an amended offer, a lease would probably have been issued, excluding the land in the incorporated townsite which was unavailable for leasing under 30 U.S.C. § 352 (1982). Appellant further explains he was advised by BLM to file the amended offer to exclude the land which was unavailable for leasing and he was "assured that this would not affect my application in any way."

In a reply to appellant's statement of reasons, BLM contends that where appellant cured the defect in his original lease offer by filing the amended offer, the offer "obtains priority on the date it is perfected," i.e., March 30, 1984, citing Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984). BLM further states the original offer would have been rejected because it included land not available for leasing.

[1] It is well established that BLM properly rejects a noncompetitive oil and gas lease offer for acquired lands where all of the land included in the offer is situated in an incorporated city, town, or village, because such land is unavailable for leasing under 30 U.S.C. § 352 (1982). Jerry Waters, 79 IBLA 198 (1984); Robert Lyon, 78 IBLA 232 (1984); C. H. Nicholson, 75 IBLA 234 (1983); see 43 CFR 3100.0-3(b). However, where only a portion of the land included in a noncompetitive oil and gas lease offer is situated within an incorporated city, town, or village, BLM may properly reject the offer as to that land, which is unavailable for leasing, and issue a lease as to the remaining acreage, under the so-called "bifurcation principle." Sam P. Jones (On Judicial Remand), 84 IBLA 331, 335 (1985), and cases cited therein; see Bruce Anderson, 85 IBLA 270 (1985). This is consistent with 43 CFR 3111.1-1(e) which provides that BLM will accept over-the-counter noncompetitive offers either "in whole or in part." An oil and gas lease offer is properly considered to be an offer to lease any and all lands described therein and no reason has been shown for rejection of appellant's offer as to lands not located within the corporate limits. Bruce Anderson, supra.

Nevertheless, we must also assess the effect of the filing of the amended lease offer. In Gian R. Cassarino, supra at 247, 91 I.D. at 12,

we in part reaffirmed the longstanding Departmental policy that over-the-counter noncompetitive offerors would be permitted to cure defects in their offers "before their rejection by BLM, with priority as of the date and time of their perfection." (Emphasis in original.) However, the statement in Cassarino refers to defects in lease offers which render the entire offer subject to rejection. Such offers cannot be treated as having been perfected at the time they originally were filed, and will be accorded priority only when the defect is cured. It can readily be seen the present case is distinguishable. Appellant's original lease offer was only subject to rejection in part as originally filed and hence appellant had a viable offer with respect to the acreage available for leasing when it was filed on March 6, 1984. Bruce Anderson, supra. Indeed, under the bifurcation principle BLM could properly have issued a lease in response to that portion of the offer. The amended offer amounted, in effect, to a partial relinquishment or withdrawal of the offer for those lands located within the corporate limits. It did not cure any defect in the original offer with respect to that acreage, and, thus, did not alter the priority of the original offer.

In effect, BLM has improperly rejected appellant's original lease offer as to the land which was available for leasing. We hereby reverse the July 1984 BLM decision in order that appellant's offer may be adjudicated with priority as of March 6, 1984, as to the land not situated within an incorporated city, town, or village.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.